IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7030 of 1999

For Approval and Signature :
HONOURABLE **MS. JUSTICE R.M.DOSHIT**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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SURAT PARSI PANCHAYAT - Petitioner(s)

Versus

BEROZ NADARSHAH DARUWALA - Respondent(s)

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Appearance :
MR AK CLERK for Petitioner
MR KK TRIVEDI for Respondent
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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT
21st September, 2007

ORAL JUDGMENT

The petitioner-Surat Parsi Panchayat [hereinafter referred to as, "***the Panchayat***"] has preferred the present petition under *Articles* 226 & 227 of the Constitution against the judgment and

award dated 30th March, 1999 passed by the Labour Court, Surat in Reference [LCS] No. 333 of 1989.

It appears that the respondent-workman was engaged by the Panchayat as a Clerk-cum-Typist since the year 1975. On 29th December, 1988, she was retrenched from service. At the time of retrenchment, she was paid one month's pay *in lieu* of notice and the retrenchment compensation, as envisaged by Section 25-F of the Industrial Disputes Act, 1947 [hereinafter referred to as, "***the Act***"]. The workman, however, did not accept the said amount nor did she encash the cheque for the sum of Rs.10,367=70p. given to her. She raised industrial dispute in respect of termination of her service which came to be referred to the Labour Court, Surat and registered as above. Before the Labour Court, the workman filed her statement of claim. According to her during the period from 10th December, 1988 to 20th December, 1988 she was ill and she could not attend the duty. After recovery, she reported for duty on 22nd December, 1988 and produced fitness certificate dated 21st December, 1988 given by Dr. Dakoria. Her service was, however, terminated with *mala fide* intention on account of

disagreement between the two trustees of the Panchayat. The claim was contested by the Panchayat. Panchayat denied the allegations made by the workman. It was asserted that the service of the workman was terminated after following due procedure i.e. after giving one month's pay in lieu of notice and the retrenchment compensation.

By the *impugned* judgment and award, the learned Labour Judge decided the Reference in favour of the workman and ordered reinstatement to workman in service with continuity of service and forty *per cent* of the backwages. According to the learned Labour Judge, service of the workman was terminated in contravention of Section 25-G of the Act, without conducting disciplinary action against the workman and without assigning reason for retrenchment. As to the backwages, the learned Judge was of the opinion that in absence of any evidence by any party, the award for payment of forty *per cent* of backwages would be just and proper.

Mr. Clerk has appeared for the Panchayat and has assailed the *impugned* judgment and award. He has submitted that the learned Judge has failed to

construe provision of the law correctly. He has submitted that Section 25-F of the Act envisages a notice of termination of service and the reasons for such termination, or in the alternative, payment of salary *in lieu* of notice. In the present case, the Panchayat had paid the workman her salary for the notice period. No reasons, therefore, required to be assigned for such retrenchment. In support thereof, he has relied upon the judgment of this Court in the matter of ***Dabhoi Nagar Palika v. O.S Patel*** [1999 (1) GLH 678]. He has next submitted that it never was the *plea* of the workman that her service was terminated in contravention of Section 25-G of the Act. In absence of the pleading and evidence in support of such pleading, the learned Judge has erred in holding that the termination of the workman's service was contrary to Section 25-G of the Act. This submission is buttressed by the judgment of the *Hon'ble* Supreme Court in the matter of ***Regional Manager, SBI v. Rakesh Kumar Tewari*** [(2006) 1 SCC 530]. He has also submitted that it was never the case of the workman or the Panchayat that termination of her service was on account of some misconduct. In absence of any

misconduct alleged against the workman, the question of punitive termination of service did not arise. Nor was the Panchayat required to conduct disciplinary proceedings in respect of non est misconduct. In the submission of Mr. Clerk, the learned Labour Judge has proceeded entirely on wrong premise. The *impugned* judgment, therefore, requires to be *quashed*. As to the backwages, Mr. Clerk has submitted that it was the workman who was required to prove that she was not gainfully employed during the period in question. In absence of any evidence by the workman, the learned Labour Judge has erred in holding that the Panchayat had failed to prove that the workman was gainfully employed. He has submitted that the onus of proof has wrongly been cast upon the Panchayat. The order for payment of backwages, therefore, deserves to be quashed and set aside.

Mr. Trivedi has contested the petition. He has supported the *impugned* judgment and award. He has submitted that the Panchayat has many activities and it runs many schools. Evidently, the Panchayat had engaged Clerks-cum-Typists in such schools who may be junior to the respondent workman. It, therefore,

establishes that the termination of service of the workman was in contravention of Section 25-G of the Act.

I do agree with Mr. Clerk. It never was the case before the Labour Court that termination of the service of the workman was in contravention of Section 25-G of the Act or was punitive. In absence of such *plea* raised by the workman, the learned Judge has evidently erred in holding that the termination of the service of the workman was in violation of Section 25-G of the Act and was made without holding disciplinary action. The learned Judge is equally wrong in holding that a notice of termination of service assigning reasons for the same was required. Section 25-F of the Act envisages retrenchment of workman from service either by giving one month's notice in writing indicating reasons for retrenchment, or *in lieu* of such notice, the workman be paid wages for the period of such notice. Both the requirements are independent and mutually exclusive. In the present case, the Panchayat had opted for the second alternative i.e., to pay, in lieu of notice, the wages for the period of notice. Hence, the

termination of service of the workman could not have been held to be contrary to Section 25-F of the Act. Once the termination of service of the workman is held to be proper and in accordance with the law, the question of payment of backwages will not arise. In any view of the matter, in absence of the *plea* taken by the workman, it cannot be inferred that the workman was not gainfully employed. In absence of such proof, the backwages could not have been awarded as a matter of course.

For the aforesaid reasons, the petition is allowed. The *impugned* judgment and award dated 30th March, 1999 passed by the Labour Court, Surat in Reference (LCS) No. 333 of 1989 is *quashed* and set-aside. The claim made by the workman stands rejected. Rule is made absolute. The parties will bear their own cost.

Mr. Clerk says that if she approaches the petitioner Panchayat, the the workman will be paid the amount of notice pay and retrenchment compensation which she did not accept at the relevant time.

{Ms. R.M Doshit, J.}

*Prakash**